

**In re: JSG TRADING CORP.; GLORIA AND TONY ENTERPRISES, d/b/a/
G&T ENTERPRISES; ANTHONY GENTILE; AND ALBERT
LOMORIELLO, JR., d/b/a HUNTS POINT PRODUCE CO.
PACA Docket No. D-94-0508.**

and

**In re: GLORIA AND TONY ENTERPRISES, d/b/a G&T ENTERPRISES;
AND ANTHONY GENTILE.
PACA Docket No. D-94-0526.**

**Ruling Denying JSG Trading Corp.'s April 9, 2002, Motion for Stay.
Filed May 1, 2002.**

PACA – Lift stay denied.

Judicial Officer denied Respondent's motion for Stay because Respondent stated that it may seek appeal.

Andrew Y. Stanton, for Complainant.
John M. Himmelberg and Gary C. Adler, for Respondent.
Ruling issued by William G. Jenson, Judicial Officer.

PROCEDURAL HISTORY

On November 29, 1999, I issued a Decision and Order on Remand as to JSG Trading Corp.: (1) concluding that JSG Trading Corp. [hereinafter Respondent] committed willful, flagrant, and repeated violations of the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. §§ 499a-499s) [hereinafter the PACA]; and (2) revoking Respondent's PACA license.¹

On January 13, 2000, Respondent filed a petition for review of *In re JSG Trading Corp.* (Decision and Order on Remand as to JSG Trading Corp.), 58 Agric. Dec. 1041 (1999), with the United States Court of Appeals for the District of Columbia Circuit. On January 21, 2000, the Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture [hereinafter Complainant], requested a stay of the November 29, 1999, order revoking Respondent's PACA license, pending the outcome of proceedings for judicial review. On January 27, 2000, I granted Complainant's request for a stay.²

On January 5, 2001, the United States Court of Appeals for the District of Columbia Circuit issued a decision affirming the November 29, 1999, Decision and Order on Remand as to JSG Trading Corp.³ Subsequently, Respondent filed a petition for a writ of certiorari, which the Supreme Court of the United States denied.⁴

On January 29, 2002, Complainant filed a Motion to Lift Stay Order as to

¹*In re JSG Trading Corp.* (Decision and Order on Remand as to JSG Trading Corp.), 58 Agric. Dec. 1041, 1094 (1999).

²*In re JSG Trading Corp.*, 59 Agric. Dec. 487 (2000) (Stay Order as to JSG Trading Corp.).

³*JSG Trading Corp. v. Department of Agric.*, 235 F.3d 608 (D.C. Cir. 2001).

⁴*JSG Trading Corp. v. Department of Agric.*, 122 S. Ct. 458 (2001).

Respondent JSG Trading Corp. [hereinafter Motion to Lift Stay] requesting that I lift the January 27, 2000, Stay Order as to JSG Trading Corp. and reinstate the November 29, 1999, Decision and Order on Remand as to JSG Trading Corp. Respondent failed to file a timely response to Complainant's Motion to Lift Stay,⁵ and on March 4, 2002, I issued an Order Lifting Stay as to JSG Trading Corp.⁵ Pursuant to the Order Lifting Stay as to JSG Trading Corp., the order revoking Respondent's PACA license becomes effective on May 8, 2002.⁶

On April 9, 2002, Respondent filed "JSG Trading Corp.'s Motion for a Stay" [hereinafter April 9, 2002, Motion for Stay]. On April 22, 2002, Complainant filed "Complainant's Opposition to JSG Trading Corp.'s Motion for a Stay." On April 25, 2002, the Hearing Clerk transmitted the record to the Judicial Officer for a ruling on Respondent's April 9, 2002, Motion for Stay.

Respondent requests that I stay the order in *In re JSG Trading Corp.* (Decision and Order on Remand as to JSG Trading Corp.), 58 Agric. Dec. 1041 (1999), for two reasons. First, Respondent states subsequent to my March 4, 2002, issuance of the Order Lifting Stay as to JSG Trading Corp., Respondent filed "Respondent JSG Trading Corp.'s Motion to Vacate the Decision and Order, To Reopen the Hearing or to Stay the Decision and Order, or In the Alternative to Consider JSG Trading Corp.'s Request for a Pardon or to Impose a Lesser Sanction" [hereinafter March 22, 2002, Motions]. Respondent contends it is quite possible that I will not rule on Respondent's March 22, 2002, Motions before May 8, 2002. Respondent further contends that, if I do not grant Respondent's April 9, 2002, Motion for Stay and I grant the relief requested in Respondent's March 22, 2002, Motions, Respondent's PACA license would be revoked for a period of time when it should not have been revoked. (Respondent's April 9, 2002, Motion for Stay at 1-2.)

Earlier today, May 1, 2002, I denied Respondent's March 22, 2002, Motions.⁷ Therefore, I reject Respondent's first basis for its April 9, 2002, request for a stay of the order revoking Respondent's PACA license.

Second, Respondent states that, if I deny Respondent's March 22, 2002, Motions, Respondent "is likely to seek judicial review of that decision" and Respondent requests a stay pending the outcome of proceedings for judicial review of that decision (Respondent's April 9, 2002, Motion for Stay at 2). As stated in this Ruling Denying JSG Trading Corp.'s April 9, 2002, Motion for Stay, *supra*, I previously denied Respondent's March 22, 2002, Motions. Nevertheless, I do not grant Respondent's request for a stay based on Respondent's speculation that it may seek judicial review of *In re JSG Trading Corp.* 61 Agric. Dec. ___ (May 1, 2002)

⁵*In re JSG Trading Corp.*, 61 Agric. Dec. ___ (Mar. 4, 2002) (Order Lifting Stay as to JSG Trading Corp.).

⁶The order revoking Respondent's PACA license is effective 61 days after the Hearing Clerk served Respondent with the Order Lifting Stay as to JSG Trading Corp. See *In re JSG Trading Corp.*, 61 Agric. Dec. ___, slip op. at 4 (Mar. 4, 2002) (Order Lifting Stay as to JSG Trading Corp.). The Hearing Clerk served Respondent with the Order Lifting Stay as to JSG Trading Corp. on March 8, 2002. See Domestic Return Receipt for Article Number 70993400001388101433. Therefore, the order revoking Respondent's PACA license becomes effective May 8, 2002.

⁷*In re JSG Trading Corp.* 61 Agric. Dec. ___ (May 1, 2002) (Rulings as to JSG Trading Corp. Denying: (1) Motion to Vacate; (2) Motion to Reopen; (3) Motion for Stay; and (4) Request for Pardon or Lesser Sanction).

(Rulings as to JSG Trading Corp. Denying: (1) Motion to Vacate; (2) Motion to Reopen; (3) Motion for Stay; and (4) Request for Pardon or Lesser Sanction) because, if Respondent were to elect not to seek judicial review, a stay of the order in *In re JSG Trading Corp.* (Decision and Order on Remand as to JSG Trading Corp.), 58 Agric. Dec. 1041 (1999), would serve no purpose.

For the foregoing reasons, Respondent's April 9, 2002, Motion for Stay is denied.
